

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:- 23.10.2007

Coram:-

The Hon'ble Mr. Justice P.D.DINAKARAN
and
The Hon'ble Mr. Justice R.REGUPATHI

Habeas Corpus Petition No.992 of 2007

Selva Rani

... Petitioner

vs.

1. The Secretary to the Government,
Prohibition and Excise Dept.,
Secretariat, Chennai 600 009.

2. The Commissioner of Police
Greater Chennai.

... Respondents

Petition under Article 226 of the Constitution of India for the issuance of a writ of Habeas Corpus to call for the records in connection with the order of detention passed by the second respondent dated 07.05.2007 in Memo No.193/BDFGISSV/2007, against the petitioner's mother Poongodi, W/o. Joseph, aged about 40 years who is confined at Special Prison for Women, Puzhal, Chennai, set aside the same and direct the respondents to produce the detainee before Court and set her at liberty.

For Petitioner : Mr.V.Parthiban

For Respondents : Mr.N.R.Elango,
Additional Public Prosecutor.

सत्यमेव जयते

O R D E R

(Delivered by R.REGUPATHI, J.)

The petitioner challenges the impugned order of detention, dated 07.05.2007, in and by which, her mother by name Poongodi has been detained as 'Bootlegger' as contemplated under the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Slum Grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14 of 1982).

2. From the grounds of detention, it is seen that on 17.04.2007 at 06.00 Hours, the detainee was found transporting 500 numbers of 50 ml. duplicate Karnataka I.D. Arrack Sachets carrying in a plastic gunny bag and the Inspector of Police attached to Prohibition Enforcement Wing, Madhavaram Unit, arrested her and seized the contraband and registered a case against her in PEW Madhavaram Unit Crime No.45 of 2007 under Sections 4(1)(i), 4(1)(aaa) read with 4(1-A) Transport TNP Act. The chemical examination revealed that the arrack was found to contain 8.1% of atropine, a poisonous substance. The Detaining Authority, taking note of six adverse cases pending against the detainee and considering her incessant activities, prejudicial to the maintenance of public health, clamped the detention order on her.

3. Learned counsel for the petitioner submits that even prior to registration of the case, in the Arrest Memo, crime Number has been assigned, which would only suggest that by foisting a false case and relying on the adverse cases, the detention order has been unjustly clamped on the detainee.

4. We have carefully examined the materials available before us with reference to the ground raised by the learned counsel for the petitioner.

In the Arrest Memo, which finds place at page No.72 of the Paper Book, Crime Number has been assigned as No.45/2007, indicating that arrest has been effected on 17.4.2007 at 6.30 Hours; however, F.I.R. has been prepared only at 11.30 Hours. As rightly pointed out by the counsel appearing for the petitioner, inasmuch as Crime Number will come into existence at the time of registration of the case, mentioning of the same in the earlier document ie., Arrest Memo, would give rise to a positive presumption that a false case has been foisted on the detainee. When the detainee/accused was arrested at 06:30 Hours and only after taking her to the police station, the case might have been registered under various Sections of the Prohibition Act, it is not clear as to how the Sponsoring Authority has mentioned the Crime Number in the earlier document ie., Arrest Memo, while apprehending the accused/detainee. Further, there is no explanation from the concerned authority as to how the Crime Number came to be noted in the Arrest Memo well prior to registration of the case. In the absence of valid explanation in respect of the above aspect, we are of the view that the impugned order of detention is liable to be quashed on the ground of non-application of mind on the part of the Detaining Authority.

5. Accordingly, the Habeas Corpus Petition is allowed and the order of detention passed by the second respondent in the proceedings dated 07.05.2007 against the detenue is quashed and the detenue is directed to be set at liberty forthwith from custody unless she is required in connection with any other case or cause.

JI.

Sd/-
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. Secretary to Govt., Prohibition & Excise Department,
Secretariat, Chennai 600 009.
2. The Commissioner of Police, Greater Chennai,
Egmore, Chennai 600 008.
3. The Public Prosecutor, High Court, Madras.
4. The Joint Secretary to Government,
public (Law & Order)
Fort St.George, Chennai-9.
5. The Superintendent,
Central Prison, Chennai (in duplication to detenu)

AKR(CO)
DCP/7.11

सत्यमेव जयते

HCP No.992 of 2007.

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